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512791

07/512,791 03/22/90 BRAIN

A Q22296PWF

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337

07/31/90

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire three month(s) from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                   |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/>  |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-13 are pending in the application

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.

3. ☒ Claims 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 are allowed.

4. ☒ Claims 1, 3, 11, 7, 1, 10, 1, 11, 10, 1, 12, 11, 10, 1 are rejected.

5. ☒ Claims 13 are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).

12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

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The disclosure is objected to because of the following informalities: There is no Figure 12 in the drawings as referred to on page 11 line 14. Appropriate correction is required.

The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the two or more collars in claim 13 must be shown or the feature cancelled from the claim. No new matter should be entered.

Claims 11/10/1 and 12/11/10/1 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The references to "the collar" have no proper antecedent basis.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1, 7/1, and 10/1 are rejected under 35 U.S.C. § 103 as being unpatentable over Brain (U.S. 4,509,514) in view of Elam (U.S. 4,235,239). Brain teaches structure as recited with exception of the drainage tube. The use of the drainage tube is taught by Elam in column 2 lines 12-25 and column 7 paragraph 2. In view of this teaching it would be obvious to use a drainage tube in the Brain structure. With respect to claim 7/1 it is obvious that the drainage tube must have its input end within whatever fluid it is desired to remove by means of the drainage

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tube. There is no apparent unobviousness in placing the drainage tube at any location from which a drainage function is desired. With respect to claim 10/1 note that Brain teaches that the flexible annular peripheral formation is inflatable. Claim 3/1 is rejected under 35 U.S.C. § 103 as being unpatentable over Brain and Elam as applied to claim 3/1 above, and further in view of Bronson et al (U.S. 4,327,720). Bronson teaches the structure of a drainage tube being smaller in diameter than the airway tube. See Figure 7 of Bronson. It is noted that the broad language employed by the applicant does not require that the drainage tube actually be located within the airway tube. Regarding "said one end region opens into the lumen of the mask" in the claim it is again obvious to place the drainage tube at any location from which a drainage function is desired.

Any inquiry concerning this communication should be directed to Stephen Funk at telephone number (703) 557-3125.



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GROUP ART UNIT 337

SRF



July 16, 1990

*Re mail setting 3 month SSP  
responsive to 7/24/90 phone call.*



David A. Wiecking  
Primary Examiner  
Art Unit 337